

(d) *Retention period; supporting records.* Records supporting the information required on the certificate(s) of delivery, as listed in paragraph (b) of this section, must be retained by the issuing party for 3 years from the date of payment of the related claim or longer period if required by law (see 19 U.S.C. 1508(c)(3)).

(e) *Retention; submission to Customs.* The certificate of delivery shall be retained by the party to whom the merchandise or article covered by the certificate was delivered. Customs may request the certificate from the claimant for the drawback claim based upon the certificate (see §§191.51, 191.52). If the certificate is requested by Customs, but is not provided by the claimant, the part of the drawback claim dependent on that certificate will be denied.

(f) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

**§ 191.11 Tradeoff.**

(a) *Exchanged merchandise.* To comply with §§191.21 and 191.22 of this part, the use of domestic merchandise taken in exchange for imported merchandise of the same kind and quality (as defined in §191.2(x)(1) of this part for purposes of 19 U.S.C. 1313(b)) shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the transfer of the imported merchandise. This provision shall be known as tradeoff and is authorized by §313(k) of the Act, as amended (19 U.S.C. 1313(k)).

(b) *Requirements.* Tradeoff must occur between two separate legal entities but it is not necessary that the entity exchanging the imported merchandise be the importer thereof. In addition, tradeoff must consist of an exchange of same kind and quality merchandise and nothing else (the exchange may be of different quantities of same kind and quality merchandise, but may not involve the payment or receipt of cash payments or other than same kind and quality merchandise). If the quantities of merchandise exchanged are dif-

ferent, the lesser quantity shall be the quantity available for drawback. If the quantity of domestic merchandise received is greater than the quantity of imported merchandise exchanged, the merchandise identified for drawback shall be the portion of the domestic merchandise equal to the quantity of imported merchandise which is first received.

(c) *Application.* Each would-be user of tradeoff, except those operating under an approved specific manufacturing drawback ruling covering substitution, must apply to the Duty and Refund Determination Branch, Office of Regulations and Rulings, Customs Headquarters, for a determination of whether the imported and domestic merchandise are of the same kind and quality. For those users manufacturing under substitution drawback, this request should be contained in the application for a specific manufacturing drawback ruling (§191.8). For those users manufacturing under a general manufacturing drawback ruling (§191.7), the request should be made by a separate letter.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

**§ 191.12 Claim filed under incorrect provision.**

A drawback claim filed pursuant to any provision of §313 of the Act, as amended (19 U.S.C. 1313) may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such provision. The claimant may raise alternative provisions prior to liquidation or by protest.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

**§ 191.13 Packaging materials.**

Drawback of duties is provided for in §313(q) of the Act, as amended (19 U.S.C. 1313(q)), on imported packaging material when used to package or repackage merchandise or articles exported or destroyed pursuant to